

Personnel

Payroll Regulations

**Family and Medical  
Leave**

**GENERAL:**

- .01 The Family and Medical Leave Act (FMLA) is a federal law that entitles eligible employees to take up to 12 weeks of leave in a 12-month period for the following purposes:

The birth of the employee's child and to care for the child;

The placement of a child with the employee for adoption or foster care;

The care of the employee's spouse, child, or parent who has a serious health condition; or

Because the employee has a serious health condition that makes him or her unable to perform the essential functions of the position.

An eligible employee's group-level manager can designate an absence as FMLA if the circumstances that caused it meet FMLA criteria, even though the employee has not specifically requested an FMLA leave. The group-level manager issues the employer notification (*see .14*) before the leave begins to inform the employee that the leave (paid or unpaid) will count against his or her FMLA entitlement. (In most cases, retroactive designation of leave as FMLA is possible only at the employee's request.)

**DEFINITIONS:**

**Eligible Employee**

- .02 To be eligible to take FMLA leave, the employee must have been a Laboratory employee for at least 1 year and must have worked (hours reported as H, S, V, or L are not included) at least 1250 hours during the 12-month period preceding the leave request.

**12 Weeks in a 12-Month  
Period**

- .03 The 12-month period begins on the first day on the calendar leave year.

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## Family and Medical Leave

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| <b>Child</b>                    | <p>.04 A child is a biological, adopted, or foster child, stepchild, legal ward, or child of someone who has acted as a parent</p> <p style="padding-left: 40px;">Who is under 18 or</p> <p style="padding-left: 40px;">Who is 18 or over but cannot provide self care because of a mental or physical disability.</p> <p>(Leave for the birth, adoption, or foster care of a child must be taken during the first 12 months after the child's birth or placement for adoption or foster care.)</p>   |
| <b>Spouse</b>                   | <p>.05 A spouse is a husband or wife as determined by state law in the state where the employee resides. (In New Mexico, unmarried domestic partners are not included in this definition.)</p>  |
| <b>Parent</b>                   | <p>.06 A parent is the biological parent of the employee or an individual who has acted as a parent. (Parents-in-law are not included.)</p>   |
| <b>Serious Health Condition</b> | <p>.07 A serious health condition is defined as a physical or mental illness, injury, impairment, or condition that involves inpatient care or an incapacity</p> <p style="padding-left: 40px;">Requiring an absence of 3 consecutive calendar days or more that involves treatment 2 or more times by a health care provider or 1 time that results in a regimen of continuing treatment under the supervision of the health care provider;</p> <p style="padding-left: 40px;">Resulting from pregnancy or for prenatal care;</p> <p style="padding-left: 40px;">Requiring a regimen of continuing treatment under the supervision of a health care provider;</p> <p style="padding-left: 40px;">Caused by a chronic health condition; or</p> <p style="padding-left: 40px;">That is permanent or long-term because of a condition for which treatment may be not effective.</p> |

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Also included in this definition is any period of absence to receive multiple treatments (including any period of recovery from such treatments) by a health care provider or on the orders of a health care provider.

### TRIGGERING EVENTS:

#### Employee Request

.08 The employee makes the group-level manager aware of the need for leave. The employee giving notice of the need for FMLA leave must explain the reasons for the leave to enable the manager to determine that the leave qualifies under the Act.

.09 The employee can satisfy this requirement by preparing a Family and Medical Leave Request Form (Form 1621). The employee provides the information about the planned absence and submits the form to the group-level manager for signature.

**NOTE:** FMLA leave cannot be denied to an eligible employee who provided oral notice and has met other requirements even if a form has never been prepared.

#### Group-Level Manager Designation

.10 When the group-level manager becomes aware of an FMLA-qualifying situation, the group-level manager must designate the leave as FMLA if the required FMLA criteria are met even though the employee has not requested it. The employee does not have to specifically invoke FMLA. The group-level manager then asks the employee to provide the information needed to fill out a request form.

### NOTIFICATIONS:

#### Employee Notification

.11 ***Need for Leave is Foreseeable*** — When the need for the leave is foreseeable, the employee must provide 30 days' advance notice of the intention to use FMLA leave to his or her group-level manager. If this notification requirement is not met, the group-level manager can delay the leave until the 30 days have elapsed. Filling out the Request form can act as notification.

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- .12 ***Emergency Situations*** — When the leave is the result of an emergency, the employee (or an acceptable representative) must notify the group-level manager as soon as practicable of the need to take FMLA leave, usually within 48 hours. The group-level manager obtains the information necessary to fill out the form from the employee or the representative and submits it for the employee.
- .13 ***For Recurrent Chronic Illnesses*** — If an employee has a chronic condition that causes absences on a recurring basis (asthma, diabetes, etc.), the employee can request or the group-level manager can designate that any occurrences of the condition are taken on an FMLA basis until the 12-week entitlement is exhausted.

### Employer Notification

- .14 No less often than the first time in each 6-month period that an employee uses FMLA leave and within 48 hours of the group-level manager becoming aware of the need for the leave, the group-level manager must provide the employee with a written notice that covers each of the following:
- That the leave (whether it is vacation, sick leave, family illness leave, job-incurred illness or injury leave, or leave without pay) will be counted against the employee's 12-week FMLA entitlement;
  - The requirement for the employee to furnish medical certification (see below) and a reminder that leave can be denied until the request for certification is met;
  - The employee's right to substitute paid leave for unpaid FMLA leave and a statement of the fact that the Laboratory will not require the use of paid leave;
  - The requirement for the employee to continue paying the employee's portion of health, dental, and vision insurance premiums and the consequences of failure to do so;
  - A notice of the employee's potential liability for any insurance premiums the Laboratory pays if the employee does not return to work at the end of an unpaid FMLA leave;

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The requirement to be cleared through ESH-2 for return to work if the absence was for the employee's own serious health condition;

The employee's right to be restored to the same or an equivalent job upon return to work;

A reminder that the supervisor may require periodic reports on the employee's status and intent to return to work.

In an emergency situation, the notice is mailed to the employee's home address.

**NOTE:** A preprinted statement, Family and Medical Leave Notification, is available to fulfill this requirement.

### MEDICAL CERTIFICATION:

**Serious Health  
Condition of Child,  
Parent, or Spouse**

- .15 If the employee is requesting the leave because of the serious health condition of his or her child, parent, or spouse, the employee's group-level manager *may* request that the employee provide the Occupational Medicine Group (ESH-2) with certification of the family member's serious health condition.

**Employee's  
Serious Health  
Condition**

- .16 If the employee is requesting the leave because of his or her own serious health condition, the employee *must* provide ESH-2 with certification of the condition from his or her private health care provider. A Laboratory form is available for obtaining the required information from the employee's health care provider. ESH-2 is the recipient and official repository for all medical certifications. ESH-2 staff will notify the supervisor that the required certification has been received and is on file at ESH-2. Group offices should not retain medical information at their locations.
- .17 **Updates on Condition** — During the leave, the supervisor may also require periodic updates on the employee's status and his or her intent to return to work. It is the employee's responsibility to keep the group-level manager informed. The employee must also provide updates to ESH-2.

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- .18 ***Disability Leave*** — Any time taken on a University of California-paid disability plan (including pregnancy disability) is considered FMLA leave and is counted toward the employee's 12-week FMLA entitlement when the employee is eligible for FMLA.
- .19 ***Job-Incurred Illness or Injury Leave*** — Any time taken on job-incurred injury or illness leave that meets the FMLA serious health condition definition is considered FMLA leave and is counted towards the employee's 12-week FMLA entitlement when the employee is eligible for FMLA.

**NOTE:** Workers' compensation payments may be affected by an employee's decision to remain on FMLA leave once he or she has been certified fit to return to work. The employee should consult the Laboratory's Risk Management staff (BUS-RM) in Business Operations.

### INTERMITTENT LEAVE:

- .20 An eligible employee may also take leave intermittently or on a reduced leave schedule. Instead of taking leave for a continuous period, the employee can break the absence up into separate blocks of time, such as weekly absences to take a parent, spouse, or child for chemotherapy treatments over a period of months. Under a reduced leave schedule, the employee would work a part-time schedule, reducing either the number of days worked or the number of hours in the day for the predetermined length of the leave. An intermittent leave or reduced leave schedule must be based on medical need; treatments and procedures not prescribed by the health care provider are not eligible. Employees should attempt to schedule their absences to minimize disrupting the operations of their organization.

**NOTE:** When leave is taken after the birth or placement of a child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the group-level manager approves.

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### REPORTING LEAVE:

#### Paid Leave

- .21 The employee may substitute paid leave for unpaid leave in any situation where current Laboratory policy permits paid leave (*See [AM 312](#) and [AM 313](#) for conditions and limitations.*) If the leave is reported as paid leave, the absence should be recorded using the appropriate code.

#### Leave Without Pay

- .22 If the absence is taken as leave without pay (LWOP), absences of 30 days or less can be noted on the attendance report as L; for LWOP absences of greater than 30 days, the supervisor must prepare a Personnel Action (PA) form changing the employee to LWOP and noting on the form that the leave is being taken for an FMLA purpose. (The PAform is in addition to the routing of copies of the approved Request form.) LWOP taken for FMLA purposes requires the same approvals as other LWOP. *See [AM 318](#).*

### COMBINING FMLA WITH OTHER LEAVES:

- .23 As noted in .18 and .19, FMLA runs concurrently with any disability or I-time absence. FMLA also runs concurrently with parental leave; any time taken under the Laboratory's parental leave policy counts toward the 12-week FMLA entitlement. In general, total combined absence for job-protected pregnancy disability, FMLA, and parental leave will not exceed 6 months after the birth of the baby.

### BENEFITS:

- .24 Employees taking unpaid FMLA leave are entitled to receive health, dental, and vision benefits under the same terms and conditions as when they are in pay status.

#### Employer Portion

- .25 Because the Laboratory continues to pay the employer portion of health, dental, and vision insurances during an FMLA leave, the Payroll Team in Accounting (BUS-1) must know when a leave without pay is being taken for an FMLA purpose. To provide BUS-1 with the information necessary to continue the premium payments, the employee's group-level manager must route a copy of the completed, signed Request form to BUS-1.

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### Employee Portion

- .26 Employees should make arrangements to pay the employee portion of the premiums if they plan to take more than 2 weeks of leave without pay. Employees should consult the Compensation and Benefits Group in Human Resources before beginning such a leave.

### RETURN TO WORK:

#### All Leaves

- .27 At the conclusion of the leave, the employee returns to the same position or an equivalent position with equivalent pay and benefits, unless the employee would not have otherwise been employed at the time reinstatement is requested. An employee on an FMLA leave is considered for a reduction in force (RIF) on the same basis as if he or she were at work.

#### For Employee's Serious Health Condition

- .28 If the employee has been away from work because of his or her own serious health condition, ESH-2 must clear the employee to return to work. Before reporting to the work site, the employee must bring a statement of his or her medical condition prepared by the health care provider to ESH-2; ESH-2 must evaluate the employee. The employee returns to work if ESH-2 concurs with the private health care provider's assessment.

### RECORD KEEPING:

- .29 Group offices records must retain signed FMLA request forms for a minimum of 3 years.

**NOTE:** Because the original record is maintained by the group office, if an employee transfers to another Laboratory organization during the 3-year period, FMLA-related records should accompany the employee.

### PROHIBITIONS:

- .30 As an employer, the Laboratory is prohibited from discriminating against employees or prospective employees who have used FMLA leave. The taking of FMLA leave cannot be used as a negative factor in employment actions, such as hiring, promotions, or disciplinary actions.



## **Family and Medical Leave**

### **RIGHT TO FMLA:**

- .31 An eligible employee's right to take leave for a legitimate FMLA purpose is protected by federal law.